

**MINUTES  
HEARING OFFICER  
SEPTEMBER 1, 2015**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

**STUDY SESSION 4:30 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Dean Miller, Planner  
Diane McGuire, Administrative Assistant II  
Michael Glab, Code Compliance Inspector

**Number of Interested Citizens Present: 6**

- Staff and the Hearing Officer discussed overview and updates to the scheduled cases for this hearing.
- Michael Glab, Code Inspector, noted that Agenda No. 2, Rosta Property Abatement, was being withdrawn as the property is now in compliance.

**REGULAR SESSION 5:00 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Dean Miller, Planner  
Diane McGuire, Administrative Assistant II

**Number of Interested Citizens Present: 10**

Meeting convened at 5:00 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by September 15, 2015 at 3:00 PM, to the Community Development Department.

-----

Ms. MacDonald noted that the following item had been removed from today's agenda:

- **Agenda Item No. 2**  
Request approval to abate public nuisance items at the **ROSTA PROPERTY (CE152679)** located at 2357 East Pebble Beach Drive. The applicant is the City of Tempe.  
**ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE**
- **Agenda Item No. 3**  
Request approval for two (2) variances to reduce the street side yard setback and the off street parking requirements for **1647 EAST BROADMOR DRIVE (PL150287)** located at 1647 East Broadmor Drive. The applicant is Manjula Vaz/Gammage & Burnham PLC.  
**CASE CONTINUED TO SEPTEMBER 15, 2015 HEARING OFFICER**
- **Agenda Item No. 7**  
Request approval for a use permit to allow RV parking to be located in the front yard setback for the **BRINER RESIDENCE (PL150311)** located at 3525 South Poplar Street. The applicant is Donald Briner.  
**CASE CONTINUED TO SEPTEMBER 15, 2015 HEARING OFFICER**
- **Agenda Item No. 9**  
Request approval for two (2) use permit standards to reduce the north and south side yard setbacks by 20% for a home addition for the **CARLSON RESIDENCE (PL150204)** located at 7918 South Ash Avenue. The applicant is Kevin Fulkerson/Cornerstone Design.  
**CASE CONTINUED TO SEPTEMBER 15, 2015 HEARING OFFICER**
- **Agenda Item No. 11**  
Request approval for a use permit to allow a tobacco retailer for **FIESTA PLAZA – OASIS VAPE (PL150298)** located at 7520 South Rural Road, Suite No. A4. The applicant is Gianni Martinez.  
**CONTINUED TO SEPTEMBER 15, 2015 HEARING OFFICER**

- 
1. Vanessa MacDonald noted that the Hearing Officer Minutes for August 18, 2015 had been reviewed and approved.

- 
2. Request approval for a use permit to allow massage therapy for **PHYSICIAN'S CHOICE MASSAGE (PL150291)** located at 1840 East Warner Road, Suite 101. The applicant is Devena Riedl.

Dean Miller, Planner, gave an overview of this case, noting that the applicant is seeking a use permit to allow massage therapy. The site is located at the northeast corner of McClintock Drive and Warner Road in a commercial center, known as McClintock Fountains, with other service oriented businesses. The site is located within the PCC-1, Planned Commercial Center Neighborhood District.

Ms. Devena Riedl and Mr. Rick Spears, were present to represent this case and agreed to the Conditions of Approval outlined in the staff summary report.

Ms. MacDonald noted that this case had been continued from the August 18, 2015 Hearing Officer as the applicant(s) had been unable to attend. She complimented them on a well-informed letter of intent/explanation which they had provided in their submittal.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

**DECISION:**

Ms. MacDonald approved the use permit for PL150291 subject to the following conditions:

1. The use permit is valid only after a building permit has been obtained and the required inspections have been completed and a final inspection has been passed.
2. The use permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit, which may result in termination of the use permit.
4. Any intensification or expansion of use shall require a new use permit.
5. Hours of operation for this use are:  
Monday – Thursday 9:00 AM – 7:00 PM; Friday and Saturday 10:00 AM – 4:00 PM.

-----

3. Request approval for a use permit to allow vehicle sales (internet based) in the GID District for **WHEELS IN MOTION AUTO SALES LLC (PL150307)** located at 7425 South Harl Avenue. The applicant is Tim Zarbock.

Sherri Lesser, Senior Planner, reviewed this case, stating that the site is located north of Elliot Road and west of Priest Drive in a tenant space along the Harl Avenue frontage. The surrounding area is industrial uses with multi-family residential to the distant east across Priest Drive. The vehicle sales are conducted via the internet and there will not be a car lot or any outdoor display of vehicles attached to this operation. All vehicles will be parked inside the warehouse.

Tim Zarbock was present to represent this case. He acknowledged his understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

**DECISION:**

Ms. MacDonald approved the use permit for PL150307 subject to the following conditions:

1. The use permit is valid for Wheels in Motion and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
2. All business signs shall be Development Plan Review approved and permits obtained.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. Obtain all necessary clearances and permits for the occupancy or storage of gas powered motors on the building interior of the warehouse from the Building Safety Division.

5. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
6. This approval does not include the outdoor display of the vehicles.

-----

4. Request approval for a use permit to allow a wireless communications facility, 60 ft. monopalm and equipment shelter for **VERIZON WIRELESS PHO LOS ARBOLES (PL150312)** located at 1840 East Warner Road. The applicant is Jason Sanks/Shaw & Associates.

Sherri Lesser, Senior Planner, reviewed this case stating that the site is located on the northeast corner of Warner Road and McClintock Drive in the McClintock Fountains Shopping Center. The proposed monopalm will be located on the north side of the site behind the shopping center.

Ms. Lesser stated that she would like to modify Condition of Approval No. 7 to include a reference to ZDC Section 4-704A (2) regarding a Performance Shade Study Option.

Jason Sanks of Shaw & Associates PLC was present to represent this case. He acknowledged his understanding of the assigned Conditions of Approval. Mr. Sanks questioned Ms. Lesser regarding the shade study and she clarified what was involved.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

#### DECISION:

Ms. MacDonald approved the use permit for PL150312 subject to the following conditions:

1. The use permit is valid for the plans as submitted within this application.
2. Obtain all clearances from Building Safety prior to the use permit becoming effective.
3. The monopalm shall have a textured base (trunk) and palm fronds that extend to fully screen antenna arrays and remote radio heads. Construction plans to depict the final details and shall be approved by planning staff prior to submittal for plan check.
4. Post emergency contact information for monopalm and equipment where visible from enclosure exterior.
5. All equipment to be removed within 30 days of termination of use.
6. The equipment shelter to match the building in color and material.
7. Installation of the tower and equipment in a parking space creates an end stall requiring the installation of a landscape island at the last parking space or meet **Section 4-704A (2) Performance Shade Study Option.**

**MODIFIED BY STAFF**

-----

5. Request approval for a use permit to allow massage therapy for a portion of the tenants occupying **PHENIX SALON SUITES (PL150301)** located at 1761 East Warner Road, Suite B5. The applicant is Penghui Zhao.

Sherri Lesser, Senior Planner, gave an overview of the case. She noted that the site is located within the PCC-1, Planned Commercial Center Neighborhood District. The owner of Phenix Salon Suites will be responsible for the activities of the massage therapy tenants leasing the individual rooms and will contain 34 separate spaces to be occupied by health and beauty professionals including massage therapists. The hours of operation will vary per

tenant space but generally the hours for the main entrance to the suites will be from 8am to 12am. Per the owner, only a maximum of 3 rooms offering massage therapy will be leased at the same time.

Ms. MacDonald questioned the ratio of 3 rooms out of 34 suites being used for massage. Ms. Lesser responded that this ratio was based on a recommendation from the Tempe Police Department.

Mr. Penghui Zhao was present to represent this case and acknowledged his understanding of the assigned Conditions of Approval.

Ms. MacDonald noted her appreciation that Mr. Zhao is limiting the number of massage suites within this facility.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

#### DECISION:

Ms. MacDonald approved the use permit for PL150301 subject to the following conditions:

1. The use permit is valid only after a building permit has been obtained and the required inspections have been completed and a final inspection has been passed.
2. The use permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
3. The use permit is valid for the Phenix Salon Suites and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
4. A maximum of three (3) individual suites offering massage therapy may operate at one time. To expand the number of leases for massage therapy in the future will require a review of the conditions of approval and calls for service. Any intensification or expansion of use shall require a new use permit.
5. Tattoo artists/businesses (except for the application of permanent make-up) may not occupy or operate in the Phenix Salon Suites. There is not adequate separation distance from residential to comply with the Zoning and Development Code separation requirements.
6. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit, which may result in termination of the use permit.
7. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the use permit becoming effective.
8. Contact the Tempe Police Department/CPTED division to initiate a security plan for the suites if deemed necessary. Contact Nate Ryberg at 480-318-3753 within 30 days of approval or by **October 1, 2015**.

-----

6. Request two (2) use permit standards to reduce the west and southwest side yard setbacks by 20% to allow a home addition for the **TARIOT SHEARD RESIDENCE (PL150317)** located at 235 West Jeanine Drive. The applicant is Karyn Parks/Parks Architects Inc.

Sherri Lesser, Senior Planner, gave a brief overview of the case noting that this location is an interior lot within the Duskfire Subdivision located south of Warner Road and east of Kyrene Road. The site is located within the R1-15, Single Family Residential District. The applicant is proposing to construct an addition on the west side of the existing house to add new bedrooms, new bathrooms and a new office and front entry. Two (2) use permit standards are being requested to the southwest edge of the existing home as a portion of the addition will encroach into the two

side yard setbacks. The addition will be accessed through the main residence. No public input has been received by staff.

Mr. Andrew Clark was present to represent this case. He acknowledged his understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that a neighborhood meeting is not a requirement of the Zoning and Development Code for use permit applications and cannot be imposed upon applicants.

Ms. MacDonald noted that this request meets the requirements for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- There are no known nuisances arising from this use that would exceed the ambient conditions of the commercial center.
- The proposed use is not in conflict with the General Plan or the surrounding neighborhood.
- The use is compatible with the existing structure and surrounding uses.
- The applicant is not proposing a use that would create a nuisance or create disruptive behavior.

**DECISION:**

Ms. MacDonald approved the two (2) use permit standards for PL150317 subject to the following conditions:

1. The use permits are valid only after a building permit has been obtained, the required inspections have been completed and a final inspection has been passed.
2. The use permits are valid for the plans as submitted with this application.
3. Any intensification or expansion of the use shall require a new use permit.

-----  
**ANNOUNCEMENTS**

- Mr. Abrahamson noted that October is National Planning Month and there will be related events and activities that will be announced at a later time.
- The next Hearing Officer public hearing will be held on Tuesday, September 15, 2015 at 5:00 PM with a study session scheduled for 4:30 PM.

-----  
With no further business, the public hearing adjourned at 5:30 PM.

-----  
Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



---

Steve Abrahamson, Principal Planner  
for Vanessa MacDonald, Hearing Officer  
SA:dm